

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

\* \* \*

FRANK ARANT,

Plaintiff,

v.

JPMORGAN CHASE BANK, CHASE  
HOME FINANCE, LLC., EXPRESS  
CAPITAL LENDING, INC., EMC  
MORTGAGE LLC, NATIONAL DEFAULT  
SERVICING CORPORATION, SELECT  
PORTFOLIO SERVICING, INC., BLACK  
AND WHITE CORPORATIONS DOES 1-  
10,

Defendants.

Case No. 2:14-cv-0386-MMD-VCF

ORDER

(Def.'s Motion to Dismiss - dkt. no. 26)

**I. SUMMARY**

Before the Court is Defendants Select Portfolio Servicing Inc. ("SPS") and National Default Servicing Corporation's ("NDS") Motion to Dismiss ("Motion"). (Dkt. no. 26.) For the reasons discussed below, the Motion is granted.

**II. BACKGROUND**

At the outset, the Court notes that Plaintiff's Complaint is unclear on much of the facts supporting his claims. The Court thus relies on the Motion to obtain the relevant background facts. From these sources, this case appears to involve Plaintiff's default on a loan and the corresponding foreclosure proceedings on a property in Clark County, Nevada, located at 8117 Chiltern Avenue in Las Vegas ("the Property").

1 To finance the purchase of the Property, Plaintiff executed a Deed of Trust and  
 2 Note for \$218,400.00. After a series of assignments, the Deed of Trust was recorded by  
 3 JP Morgan Chase Bank, N.A. (“JPMorgan”) on August 13, 2013. (Dkt. no. 26 at 3.)

4 The parties allude to the fact that Plaintiff defaulted on his loan and that non-  
 5 judicial foreclosure proceedings were initiated. Again, the Court notes the scarcity of  
 6 facts provided by the Complaint and by the parties.

### 7 **III. LEGAL STANDARD**

8 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which  
 9 relief can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must  
 10 provide “a short and plain statement of the claim showing that the pleader is entitled to  
 11 relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).  
 12 The Rule 8 notice pleading standard requires Plaintiff to “give the defendant fair notice of  
 13 what the . . . claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555  
 14 (citation and internal quotation marks omitted). While Rule 8 does not require detailed  
 15 factual allegations, it demands more than “labels and conclusions” or a “formulaic  
 16 recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
 17 (2009) (*quoting Twombly*, 550 U.S. at 555). “Factual allegations must be enough to raise  
 18 a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. When  
 19 determining the sufficiency of a claim, “[w]e accept factual allegations in the complaint as  
 20 true and construe the pleadings in the light most favorable to the non-moving party[;  
 21 however, this tenet does not apply to] . . . legal conclusions . . . cast in the form of factual  
 22 allegations.” *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (citation and internal  
 23 quotation marks omitted). Thus, “[t]o survive a motion to dismiss, a complaint must  
 24 contain sufficient factual matter, accepted as true, to state a claim to relief that is  
 25 plausible on its face.” *Iqbal*, 556 U.S. at 678 (citation and internal quotation marks  
 26 omitted).

27 Federal civil pleading is notice pleading. *E.g.*, *Starr v. Baca*, 652 F.3d 1202, 1212-  
 28 16 (9th Cir. 2011). The notice pleading requirements of Rule 8(a) can be violated not

1 only “when a pleading says *too little*,” but also “when a pleading says *too much*.” *Knapp*  
2 *v. Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013), *cert. denied*, 135 S. Ct. 57 (Oct. 6,  
3 2014); *see also McHenry v. Renne*, 84 F.3d 1172, 1179-80 (9th Cir.1996) (affirming a  
4 dismissal under Rule 8, and recognizing that “[p]rolix, confusing complaints such as the  
5 ones plaintiffs filed in this case impose unfair burdens on litigants and judges”).

#### 6 **IV. DISCUSSION**

7 The Court concludes that the Complaint says far too much and does so  
8 unnecessarily. First, the Complaint is replete with generalized allegations of the  
9 transgressions committed by JPMorgan. (Dkt. no. 1 ¶¶ 21(a-r).) Plaintiff generally  
10 alleges that Defendants SPS and NDS are responsible for the misdeeds of JPMorgan;  
11 however, Plaintiff fails to provide any support for this contention, but rather offers the  
12 conclusory allegation that “[e]ach of the corporate defendants are agents of each other  
13 and are legally responsible for the acts of omissions of each other.” (*Id.* ¶ 12.)

14 Moreover, even if the Court were to assume that SPS and NDS are agents of  
15 JPMorgan, Plaintiff fails to provide any factual support for what JPMorgan did with  
16 respect to his loan so as to impose liability upon these two entities. The Complaint is  
17 disjointed, confusing, and fails to provide any factual allegations that would support any  
18 plausible claims against Defendants SPS and NDS.

19 Accordingly, the Court concludes that the allegations made in Plaintiff’s Complaint  
20 fail to satisfy the notice pleading requirements of Rule 8(a) and do not support claims  
21 against either Defendants. Plaintiff is granted leave to file an amended complaint that  
22 provides “a short and plain statement of the claim showing” Plaintiff “is entitled to relief.”  
23 Fed. R. Civ. P. 8(a)(2).

#### 24 **V. CONCLUSION**

25 It is therefore ordered that Defendants’ Motion to Dismiss (dkt. no. 26) is granted.  
26 It is further ordered that Plaintiff may file an amended complaint within twenty (20)  
27 days. Failure to file an amended complaint will result in dismissal of Plaintiff’s claims

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1 against Defendants SPS and NDS with prejudice. It is further ordered the Defendants'  
2 Motion for a Hearing or Ruling (dkt. no. 40) is denied as moot.

3  
4 DATED THIS 22<sup>nd</sup> day of December 2014.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE